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8 UNITED STATES DISTRICT COURT
9 CENTRAL DISTRICT OF CALIFORNIA
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11 RONNIE MICHAEL MARTINEZ,) NO. CV 17-3744-E
12 Plaintiff,)
13 v.) MEMORANDUM OPINION
14 NANCY A. BERRYHILL, ACTING) AND ORDER OF REMAND
15 COMMISSIONER OF SOCIAL SECURITY,)
16 Defendant.)
17

18 Pursuant to sentence four of 42 U.S.C. section 405(g), IT IS
19 HEREBY ORDERED that Plaintiff's and Defendant's motions for summary
20 judgment are denied and this matter is remanded for further
21 administrative action consistent with this Opinion.
22

23 PROCEEDINGS
24

25 Plaintiff filed a complaint on May 17, 2017, seeking review of
26 the Commissioner's denial of disability benefits. The parties filed a
27 consent to proceed before a United States Magistrate Judge on June 13,
28 2017. Plaintiff filed a motion for summary judgment on January 13,

1 2018.¹ Defendant filed a motion for summary judgment on April 17,
2 2018. The Court has taken the motions under submission without oral
3 argument. See L.R. 7-15; Order, filed May 22, 2017.

4
5 **BACKGROUND AND SUMMARY OF ADMINISTRATIVE DECISION**
6

7 On August 6, 2012, Plaintiff applied for Supplemental Security
8 Income, asserting disability since June 1, 2008, based on alleged
9 schizophrenia, anxiety, paranoia, and panic attacks (Administrative
10 Record ("A.R.") 204-12, 221, 269). On October 22, 2015, an
11 Administrative Law Judge ("ALJ") found that Plaintiff suffers from
12 severe psychosis, not otherwise specified, mood disorder, not
13 otherwise specified, autism spectrum disorder, and borderline
14 intellectual functioning (A.R. 20). According to the ALJ, Plaintiff
15 did not meet or equal any of the listed impairments (A.R. 21-23).
16

17 The ALJ determined that Plaintiff retains a residual functional
18 capacity to work at all exertional levels, limited to work involving
19 simple, repetitive tasks in a low stress environment, not requiring
20 fast-paced production or quotas, and not requiring more than
21 occasional interpersonal contact (A.R. 23-30). The ALJ found that
22 Plaintiff can perform work that exists in significant numbers in the
23 national economy (A.R. 30-31 (adopting vocational expert testimony at
24 A.R. 86)). Consequently, the ALJ found Plaintiff not disabled (A.R.
25 18, 31). The Appeals Council denied review (A.R. 1-3).
26

27 ¹ Plaintiff's motion violates paragraph VI of the
28 "Order," filed May 22, 2017. Counsel shall heed the Court's
orders in the future.

STANDARD OF REVIEW

Under 42 U.S.C. section 405(g), this Court reviews the Administration's decision to determine if: (1) the Administration's findings are supported by substantial evidence; and (2) the Administration used correct legal standards. See Carmickle v. Commissioner, 533 F.3d 1155, 1159 (9th Cir. 2008); Hoopai v. Astrue, 499 F.3d 1071, 1074 (9th Cir. 2007); see also Brewes v. Commissioner, 682 F.3d 1157, 1161 (9th Cir. 2012). Substantial evidence is "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion." Richardson v. Perales, 402 U.S. 389, 401 (1971) (citation and quotations omitted); see also Widmark v. Barnhart, 454 F.3d 1063, 1066 (9th Cir. 2006).

DISCUSSION

Plaintiff contends, inter alia, that the ALJ materially erred in evaluating whether Plaintiff met or equaled a listed impairment for a Mental Disorder under 20 C.F.R. § Pt. 404, Subpt. P, App. 1, Listing 12.00 et seq. (eff. Aug. 12, 2015 to May 23, 2016) (the "Listings").² For the reasons discussed below, the Court agrees with respect to Listing 12.05. Remand is appropriate.

I. Summary of the Relevant Medical Record

Consulative examining psychologist Dr. Bahareh Talei authored a "Complete Psychological Evaluation," dated May 14, 2013, when Plaintiff was 19 years old (A.R. 650-53). Plaintiff reportedly had been receiving "psychotherapeutic and psychological treatment," including psychiatric hospitalization, for depression, anxiety, and paranoid schizophrenia (A.R. 651). Plaintiff reportedly was taking Risperdal, Celexa, Cogentin, Geodon, and Klonopin (A.R. 651). On mental status examination, Plaintiff reportedly was withdrawn and sullen, lethargic and fatigued, with fleeting eye contact, psychomotor

² The criteria for all of the mental health listings were amended effective January 17, 2017. See Revised Criteria for Evaluating Mental Disorders, 81 Fed. Reg. 66138-01, 2016 WL 5341732 (Sept. 26, 2016) (amending 20 C.F.R. § 404.1520a). Federal courts review administrative decisions using the rules that were in effect at the time the decisions issued. See id. n.1; see also, e.g., Hall v. Berryhill, 2018 WL 621282, at *5 n.8 (E.D. Cal. Jan. 30, 2018) (applying listings in effect at time of ALJ's decision). Accordingly, the Court has reviewed Plaintiff's claim under the Listings in effect from August 12, 2015 to May 23, 2016.

1 slowing, dysthymic mood and flat affect (A.R. 651-52). Plaintiff
2 "endorses[ed] auditory hallucinations" with "slight bizarreness
3 evident," and had mildly diminished memory, attention, and
4 concentration (A.R. 651-52). According to Dr. Talei, Plaintiff also
5 was "socially inappropriate" (A.R. 653).

6
7 Dr. Talei considered Plaintiff's full scale IQ of 70 to be a
8 valid estimation of Plaintiff's functional level (A.R. 652).³ Dr.
9 Talei opined that Plaintiff's cognitive ability falls within the
10 "borderline" range, and Dr. Talei diagnosed schizophrenia, paranoid
11 type, and borderline intellectual functioning, with a Global
12 Assessment of Functioning ("GAF") Score of 60 (A.R. 652-53).
13 See American Psychological Association, Diagnostic and Statistical
14 Manual of Mental Disorders ("DSM-IV-TR") 34 (4th Ed. 2000).⁴ Dr.
15 Talei opined that Plaintiff would have: (1) an ability to understand,
16 remember, and carry out simplistic instructions without difficulty;
17 (2) moderate inability to understand, remember, and carry out detailed
18 instructions; (3) an ability to make simplistic work-related decisions

19
20 ³ The Record contains Plaintiff's special education
21 records, which include records reflecting residential treatment
22 for emotional disturbances with inpatient psychiatric treatment.
23 See A.R. 311-627. At the time of his administrative hearings,
24 Plaintiff was living in a group home, attending school and later
25 attending specialized job training for persons with developmental
disabilities for 30 hours a week. See A.R. 57-60, 76-78 (hearing
testimony); see also A.R. 345-47 (summarizing some of Plaintiff's
educational history), 365-69 (information concerning Plaintiff's
job training).

26 ⁴ A GAF of 51-60 indicates "[m]oderate symptoms (e.g.,
27 flat affect and circumstantial speech, occasional panic attacks)
28 or moderate difficulty in social, occupational, or school
functioning (e.g., temporarily falling behind in schoolwork)."
DSM-IV-TR, p. 34.

1 without special supervision; and (4) moderate inability to interact
2 appropriately with supervisors, coworkers, and peers on a consistent
3 basis (A.R. 653).

4
5 State agency physicians reviewed Dr. Talei's findings and
6 considered whether Plaintiff met Listings 12.03 (schizophrenia,
7 paranoid and other disorders) or 12.08 (personality disorders) (A.R.
8 97-99, 112). The state agency physicians found that Plaintiff had
9 "mild" restriction in activities of daily living, "moderate"
10 difficulties in maintaining social functioning, "moderate"
11 difficulties in maintaining concentration, persistence, or pace, and
12 no episodes of decompensation (id.). The state agency physicians did
13 not consider whether Plaintiff met any other Listings for mental
14 disorders (id.).

15
16 Plaintiff's treating psychologist, Dr. Linda Sitomer, provided a
17 "Therapist Source Statement" dated March 22, 2015 (A.R. 713-15). Dr.
18 Sitomer reportedly treated Plaintiff from June of 2013 to June of 2014
19 (A.R. 713; see A.R. 665-74 (Dr. Sitomer's treatment records provided
20 in October of 2013 dated back to June of 2013)). Dr. Sitomer
21 diagnosed major depression and cognitive-intellectual disorder,
22 moderate, and assigned a GAF of 35 initially and 38 at Plaintiff's

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1 last session (A.R. 713).⁵ Dr. Sitomer endorsed "marked" (i.e., 50
2 percent loss of ability in an 8-hour workday) to "extreme" (i.e., 100
3 percent loss) limitations in Plaintiff's occupational and social
4 functioning, and noted that Plaintiff had missed school more than four
5 times per month when he was enrolled (A.R. 714).

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12 ⁵ A GAF score of 31-40 indicates "[s]ome impairment in
13 reality testing or communication (e.g., speech is at times
14 illogical, obscure, or irrelevant) OR major impairment in several
15 areas, such as work or school, family relations, judgment,
16 thinking, or mood (e.g., depressed man avoids friends, neglects
family, and is unable to work; child frequently beats up younger
children, is defiant at home, and is failing at school)." DSM-
IV-TR, p. 34.

17 The record contains other GAF scores of 25 for evaluations
18 from March of 2010 (A.R. 384, 405, 527, 536), July of 2011 (A.R.
19 574), October of 2011 (A.R. 559) and January of 2012 (A.R. 545),
when Plaintiff was living in a residential treatment center (A.R.
20 384). A GAF score of 21-30 indicates that "[b]ehavior is
21 considerably influenced by delusions or hallucinations OR serious
22 impairment in communication or judgment (e.g., sometimes
incoherent, acts grossly inappropriately, suicidal preoccupation)
OR inability to function in almost all areas (e.g., stays in bed
all day; no job, home, or friends)." DSM-IV-TR, p. 34.

23 The record also contains GAF scores of 20 for evaluations
24 from July of 2008 (A.R. 710-11) and April of 2014 (A.R. 689),
25 when Plaintiff was hospitalized involuntarily for psychiatric
26 treatment (A.R. 685-712). A GAF score of 11-20 indicates "[s]ome
27 danger of hurting self or others (e.g., suicide attempts without
clear expectation of death; frequently violent; manic excitement)
OR occasionally fail to maintain minimal personal hygiene (e.g.,
28 smears feces) OR gross impairment in communication (e.g., largely
incoherent or mute)." DSM-IV-TR, p. 34.

1 **II. The ALJ Committed Several Errors in the Analysis of Whether**
2 **Plaintiff Meets Listing 12.05.**
3

4 At step three of the sequential evaluation process, the ALJ must
5 determine whether a claimant has an impairment or combination of
6 impairments that meets or equals a listed impairment. See 20 C.F.R.
7 §§ 404.1520(d), 416.920(d). If a claimant meets or equals a listed
8 impairment, he or she is "conclusively presumed to be disabled and
9 entitled to benefits." Bowen v. City of New York, 476 U.S. 467, 471
10 (1986); accord Ramirez v. Shalala, 8 F.3d 1449, 1452 (9th Cir. 1993);
11 see also 20 C.F.R. §§ 404.1525(a), 416.925(a) (discussing the
12 Listings). An impairment meets a listing if the impairment matches
13 all of the specified medical criteria. Sullivan v. Zebley, 493 U.S.
14 521, 530 (1990), superceded by statute on other grounds as stated in
15 Kennedy v. Colvin, 738 F.3d 1172, 1174 (9th Cir. 2013); Tackett v.
16 Apfel, 180 F.3d 1094, 1098 (9th Cir. 1999). An impairment or
17 combination of impairments that manifests only some of the criteria,
18 no matter how severely, does not qualify. Sullivan v. Zebley, 493
19 U.S. at 530; Tackett v. Apfel, 180 F.3d at 1099.

20
21 A claimant bears the burden of proving that he or she has an
22 impairment or combination of impairments that meets or equals the
23 criteria of a listed impairment. See Roberts v. Shalala, 66 F.3d 179,
24 182 (9th Cir. 1995), cert. denied, 517 U.S. 1122 (1996); see also
25 Sullivan v. Zebley, 493 U.S. at 530-31. Nevertheless, an ALJ must
26 adequately evaluate and discuss the evidence before concluding that a
27 claimant's impairments fail to meet or equal a listing. See Marcia v.
28 Sullivan, 900 F.2d 172, 176 (9th Cir. 1990) ("In determining whether a

1 claimant equals a listing under step three. . . the ALJ must explain
2 adequately his evaluation of alternative tests and the combined
3 effects of the listed impairments.").

4
5 In the present case, the ALJ decided that Plaintiff did not meet
6 or equal Listings 12.03 (schizophrenic, paranoid and other psychotic
7 disorders), 12.04 (affective disorders), 12.05 (intellectual
8 disability), 12.06 (anxiety-related disorders), or 12.10 (autistic
9 disorder and other pervasive developmental disorders) (A.R. 21-23).
10 See Listing 12.00 et seq. As discussed below, the ALJ committed
11 several material errors with respect to Listing 12.05.

12
13 **A. The ALJ Erred by Failing to Evaluate and Discuss Whether**
14 **Plaintiff Met Listing 12.05's Initial Requirement.**

15
16 The initial requirement of Listing 12.05 is "significantly
17 subaverage general intellectual functioning with deficits in adaptive
18 functioning initially manifested during the developmental period;
19 i.e., the evidence demonstrates or supports onset of the impairment
20 before age 22." The ALJ did not indicate whether Plaintiff met this
21 initial requirement (A.R. 21-23). The ALJ did find that Plaintiff's
22 borderline intellectual functioning was "well supported" by the
23 objective clinical findings, and the ALJ appeared specifically to find
24 "sufficient evidence" of Plaintiff's "valid IQ score of 70, prior to
25 age 22" (A.R. 20-21). Compare Listing 12.05 (introductory paragraph
26 requiring onset before age 22) with Listings 12.03(A), 12.04(A),
27 12.06(A), and 12.10(A) (having no such requirement). However, the ALJ
28 did not make any specific finding concerning whether Plaintiff also

1 suffered from deficits in "adaptive functioning" initially manifested
2 before age 22. See A.R. 21-23. This was error. See, e.g., Moreno v.
3 Berryhill, 2017 WL 4119064, at *8-9 (C.D. Cal. Sept. 4, 2017)
4 (remanding for consideration of whether plaintiff met Listing 12.05
5 where ALJ did not consider whether plaintiff had deficits in adaptive
6 functioning); Reed v. Berryhill, 2017 WL 684154, at *4, *7 (W.D. Wash.
7 Feb. 21, 2017) (finding that ALJ erred by failing to consider whether
8 plaintiff met the requirements for Listing 12.05's introductory
9 paragraph and remanding for evaluation of whether plaintiff met the
10 requirements for a listed impairment).

11
12 The DSM-IV-TR defines "adaptive functioning" as "how effectively
13 individuals cope with common life demands and how well they meet the
14 standards of personal independence expected of someone in their
15 particular age group, socioeconomic background, and community
16 setting." See DSM-IV-TR, p. 42; see also Hall v. Florida, 134 S. Ct.
17 1986, 2009 (2014) (Alito, J., dissenting) ("'[I]ntellectual functions'
18 include 'reasoning, problem solving, planning, abstract thinking,
19 judgment, academic learning, and learning from experience,' while
20 adaptive functioning refers to the ability 'to meet developmental and
21 sociocultural standards for personal independence and social
22 responsibility.'" (quoting American Psychiatric Association,
23 Diagnostic and Statistical Manual of Mental Disorders, p. 33 (5th Ed.
24 2013))). In this case, the record contains conflicting evidence

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1 concerning whether Plaintiff manifested "deficits in adaptive
2 functioning" before age 22.⁶

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4 **B. The ALJ's Findings Regarding the Paragraph A Criteria for**
5 **Listing 12.05 are Ambiguous or Inconsistent.**
6

7 On page 21 of the ALJ's decision, the ALJ found "sufficient
8 evidence of the 'paragraph A' single criteria" for Listing 12.05 (as
9 well as for the other listings considered). At page 23 of the ALJ's
10 decision, however, the ALJ found that the requirements of paragraph A
11 of Listing 12.05 "are not met. . . ." Where, as here, an ALJ's
12 findings are ambiguous or inconsistent, remand for further
13 administrative proceedings is appropriate. See, e.g., Rodriguez v.
14

15 ⁶ This conflicting evidence includes the following
16 reports. Plaintiff was enrolled in special education classes
17 since the eighth grade, based at least in part on emotional
18 disturbance and autism, with conflicting notes regarding whether
19 cognitive disability was suspected (A.R. 312-15, 345-47, 354-57).
20 Plaintiff's adaptive skills were noted as "mildly" impaired (A.R.
21 347). Plaintiff had struggled and was retained in first grade
22 and had mostly "F" grades in 11th grade (A.R. 345, 399-400), but
23 had mostly passing grades in 9th and 10th grades (A.R. 398).
24 There were observations that Plaintiff was unwilling to work in a
25 classroom, had little motivation to participate in class or
26 complete work, was not working at his ability level, and had
27 difficulties with math and social situations (A.R. 410-12, 442-
28 44, 477-78, 505). Plaintiff scored "significantly" below his
grade level on standardized testing (A.R. 506). Plaintiff
graduated from high school (A.R. 76-77). Plaintiff was living in
a group home and attending specialized occupational training for
people with developmental disabilities at the time of the
hearings (all prior to age 22), with notes in the record that he
struggled even within a highly structured environment (A.R. 76-
78, 365-69, 391). Plaintiff had poor school attendance due in
part to anxiety (A.R. 345). Plaintiff also had emotional and
behavioral problems with associated psychiatric
hospitalization(s) and extensive treatment (A.R. 345).

1 Astrue, 2011 WL 1103119, at *9 (E.D. Cal. March 22, 2011); Mingo v.
2 Apfel, 1998 WL 373411, at *2 (D. Kan. July 1, 1998).

3
4 **C. The ALJ Erroneously Found Plaintiff Failed to Meet Paragraph**
5 **C of Listing of 12.05.**
6

7 To meet paragraph C of Listing 12.05, a claimant must have "[a]
8 valid verbal, performance or full scale IQ of 60 through 70 and a
9 physical or other mental impairment imposing an additional and
10 significant work-related limitation of function." Dr. Talei's testing
11 of Plaintiff yielded a full scale IQ of 70 when Plaintiff was 19 years
12 old (A.R. 652). The ALJ characterized this score as "valid" (A.R.
13 21).

14
15 However, the ALJ found that Plaintiff did not meet the remaining
16 part of Listing 12.05(C). The ALJ based this finding on the ALJ's
17 belief that Plaintiff had not shown "marked" restriction of activities
18 in any of three areas of functioning or repeated episodes of
19 decompensation (A.R. 23). Contrary to the basis for the ALJ's
20 finding, however, Listing 12.05(C) does not require "marked"
21 restriction of activities or repeated episodes of decompensation.
22 Listing 12.05(C) requires only that other impairments impose "an
23 additional and significant work-related limitation of function."
24 Compare Listing 12.05(C) with Listing 12.05(D). As discussed below,
25 findings elsewhere in the ALJ's decision prove the existence of other
26 impairments that impose "an additional and significant work-related
27 limitation of function."
28

1 The ALJ found Plaintiff suffers from "severe" psychosis, mood
2 disorder, and autism spectrum disorder, which "cause more than minimal
3 limitations in the ability to perform basic nonexertional demands of
4 work activity." See A.R. 20 (citing 20 C.F.R. 416.920(C)). These
5 findings necessarily meet the remaining part of section 12.05(C). See
6 Listing 12.00(A) ("For paragraph C, we will assess the degree of
7 functional limitations the additional impairment(s) imposes to
8 determine if it significantly limits your physical and mental ability
9 to do basic work activities, i.e., is a "severe" impairment(s), as
10 defined in . . . 416.920(C)); Fanning v. Bowen, 827 F.2d 631, 633 (9th
11 Cir. 1987) (any "severe" impairment meets or equals the "additional
12 and significant work-related limitation of function" prong of section
13 12.05(C) of the Listings); accord Hall v. Berryhill, 2018 WL 621282,
14 at *5-6 (E.D. Cal. Jan. 30, 2018) (any finding of severe impairment
15 other than "borderline intellectual functioning" is a per se finding
16 of an "impairment imposing additional and significant work-related
17 limitations of functions" per Listing 12.05(C)) (citations omitted);
18 Markewicz v. Berryhill, 2017 WL 4417226, at *6 (W.D. Wash. Oct. 5,
19 2017) (same); Martinez v. Colvin, 2015 WL 4662620, at *7 (E.D. Cal.
20 Aug. 5, 2015) (same); Strickland v. Colvin, 2015 WL 1728354, at *4
21 (C.D. Cal. Apr 15, 2015) (same).

22 23 **III. Remand Is Appropriate.**

24
25 The Court has discretion under 42 U.S.C. section 405(g) to decide
26 "whether to remand for further proceedings or for an award of
27 benefits." Holohan v. Massanari, 246 F.3d 1195, 1210 (9th Cir. 2001)
28 (citations omitted). "[T]he proper course, except in rare

1 circumstances, is to remand to the agency for additional
2 investigation or explanation." Treichler v. Commissioner, 775 F.3d
3 1090, 1099 (9th Cir. 2014) (citations omitted); INS v. Ventura, 537
4 U.S. 12, 16 (2002) (upon reversal of an administrative determination,
5 the proper course is to remand for additional agency investigation or
6 explanation, except in rare circumstances). A district court should
7 examine whether the record "is fully developed, is free from conflicts
8 and ambiguities, and all essential factual issues have been resolved.
9 . . . Unless the district court concludes that further administrative
10 proceedings would serve no useful purpose, it may not remand with a
11 direction to provide benefits." Dominquez v. Colvin, 808 F.3d 403,
12 407 (9th Cir. 2015) (citations and quotations omitted) (emphasis
13 added).

14
15 In the present case, outstanding issues must be determined before
16 deciding whether Plaintiff meets or equals Listing 12.05. For
17 example, the Administration must determine whether Plaintiff exhibited
18 "deficits in adaptive functioning" prior to age 22.

19
20 Rather than remanding for further administrative proceedings,
21 some district courts finding errors concerning Listing 12.05(C) have
22 weighed the record evidence and determined the existence or
23 nonexistence of adaptive functioning deficits. See, e.g., Pryor v.
24 Commissioner, 2018 WL 1071266, at *4 (E.D. Cal. Feb. 26, 2018)
25 (reviewing record to find no material error where ALJ's analysis for
26 Listing 12.05(C) was insufficient; plaintiff had not discharged her
27 burden of showing deficits in adaptive functioning because record
28 showed that she was capable of understanding, remembering, and

1 carrying out simple one-step instructions, performing all of her own
2 personal grooming and hygiene, playing basketball, swimming, watching
3 television, preparing her own meals, shopping in stores for junk food,
4 and she had worked for a brief time); Walker-Williams v. Berryhill,
5 2018 WL 921504, at *3-4 (D. Or. Feb. 15, 2018) (finding ALJ erred in
6 failing to find plaintiff met Listing 12.05(C) and remanding for
7 payment of benefits where record showed plaintiff was enrolled in
8 special education classes before high school, completed high school
9 while reporting certain subjects were difficult for her, was not able
10 to complete a community college course, was unable to obtain a
11 driver's license, had never lived independently, had limited ability
12 to prepare meals, did not manage her own money, was able to use public
13 transportation to go to places she previously had been, and had a
14 limited, low-skilled work history with reported difficulties
15 remembering and functioning in her jobs when she did not have one-on-
16 one supervision and guidance, but was able to attend to her personal
17 needs such as bathing and grooming, used public transportation without
18 accompaniment, shopped in stores, and could operate a phone and
19 computer); Blacktongue v. Berryhill, 229 F. Supp. 3d 1216, 1220-24
20 (W.D. Wash. 2017) (weighing conflicting record evidence regarding
21 deficits in adaptive functioning during the developmental period,
22 finding ALJ erred in determining plaintiff failed to meet Listing
23 12.05(C), and remanding for payment of benefits; record showed that
24 Plaintiff had attended special education classes, dropped out of
25 school, and had not learned to speak until he was 5 or 6 years old;
26 however, record also showed plaintiff was able independently to care
27 for his hygiene and grooming, prepare meals, perform household chores,
28 drive, shop for groceries, visit with family, take his wife to

1 appointments, care for his six children, and work low-skilled, manual
2 labor jobs); Holler v. Berryhill, 2017 WL 4546380, at *3-5 (W.D. Wash.
3 Oct. 12, 2017) (remanding for an award of benefits where ALJ had found
4 plaintiff failed to show deficits in adaptive functioning because she
5 graduated from high school without special education, had substantial
6 gainful activity, earned online paralegal and medical office assistant
7 certificates and cared for her father when he was ill, as well as for
8 her children; other evidence in the record from the development period
9 showed she was held back a grade, had difficulties with memory and
10 auditory processing, was a "slow learner," was having difficulties in
11 a variety of school areas, missed school due to psychosomatic
12 symptoms, and was given extra time for tests while in school); Wilson
13 v. Berryhill, 2017 WL 5973386, at *4 (D. Or. Oct. 4, 2017) (finding
14 plaintiff disabled under Listing 12.05(C) and remanding for payment of
15 benefits; circumstantial evidence showed requisite deficits in
16 adaptive functioning during the relevant developmental period, where
17 plaintiff attended special education classes, dropped out of high
18 school her senior year, had trouble understanding, and could not
19 obtain a GED because it was too frustrating); Josh v. Berryhill, 2017
20 WL 4330780, at *7-8 (D. Or. Sept. 29, 2017) (same where ALJ did not
21 clearly and expressly consider whether plaintiff had deficits in
22 adaptive functioning but record showed that plaintiff attended special
23 education classes, did not graduate, performed poorly in school, and
24 medical opinion evidence had found "moderate" limitations in
25 plaintiff's abilities, and ALJ's residual functional capacity
26 determination had precluded plaintiff from persuasive communication
27 tasks, tasks requiring teamwork or work that involved interaction with
28 the public or fast-paced production); Holly v. Colvin, 2017 WL

1 1197816, at *2-3 (D. Or. March 30, 2017) (finding plaintiff disabled
2 under Listing 12.05(C) and remanding for payment of benefits; ALJ
3 erred in determining that plaintiff did not show the required deficits
4 in adaptive functioning during the developmental period, where
5 plaintiff did not receive special education services, left school due
6 to pregnancy, later earned a GED, and had performed substantial
7 gainful activity for years in a position requiring specific vocational
8 preparation, but other evidence suggested that plaintiff performed
9 poorly or marginally in school, had to repeat kindergarten, and had
10 help from her mother and sister with paying her bills, household
11 chores, child care, and reminders and instructions); Holt v.
12 Berryhill, 274 F. Supp. 3d 1187, 1198-99 (W.D. Wash. Apr. 5, 2017)
13 (finding plaintiff disabled under Listing 12.05(C) and remanding for
14 payment of benefits; ALJ erred in determining that plaintiff did not
15 show the required deficits in adaptive functioning during the
16 developmental period, where matter previously had been remanded for
17 the ALJ to consider issue, and record showed that plaintiff had a
18 special education history, poor work history, no driver's license,
19 difficulty living unassisted, and lacked romantic relationships).

20
21 Other district courts finding errors concerning Listing 12.05
22 have remanded for further administrative proceedings. See, e.g.,
23 Moreno v. Berryhill, 2017 WL 4119064, at *8-9 (C.D. Cal. Sept. 14,
24 2017) (remanding for consideration of whether plaintiff met Listing
25 12.05(C) where ALJ did not consider whether plaintiff had deficits in
26 adaptive functioning and record showed, inter alia, extensive special
27 education history with psychiatric hospitalization, IEPs, behavior
28 problems, and continued challenges despite structured setting);

1 Alexander v. Colvin, 2017 WL 461611, at *7-12 (D. Or. Jan. 5, 2017)
2 (where ALJ erred by failing to consider whether plaintiff met Listing
3 12.05(C), and parties argued conflicting evidence regarding whether
4 plaintiff had deficits in adaptive functioning during the
5 developmental period, the ALJ was in the best position to weigh the
6 evidence on remand to determine whether plaintiff met Listing
7 12.05(C); plaintiff had graduated from high school, was not enrolled
8 in special education classes, attended some college, and had
9 "successful" past work; however, plaintiff also had never lived alone,
10 never developed complex relationships, and never managed a check book;
11 plaintiff did not socialize with friends, had struggled to maintain
12 work, depended on her family, was a slow learner, struggled
13 academically, failed her driver's test several times, and had been
14 laid off several times from work due to performance issues).

15
16 Under the circumstances of the present case, this Court believes
17 that a remand for further administrative proceedings is appropriate.
18 The Court does not believe that it should weigh the persuasiveness of
19 the conflicting evidence and make findings of fact on issues reserved
20 to the Commissioner. See id.; see generally, Dominguez v. Colvin, 808
21 F.3d at 407.

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1 **CONCLUSION**

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3 For all of the foregoing reasons,⁷ Plaintiff's and Defendant's

4 motions for summary judgment are denied and this matter is remanded

5 for further administrative action consistent with this Opinion.

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7 LET JUDGMENT BE ENTERED ACCORDINGLY.

8

9 DATED: April 25, 2018.

10

11 /S/

12 CHARLES F. EICK

13 UNITED STATES MAGISTRATE JUDGE

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26 ⁷ The Court has not reached any other issue raised by

27 Plaintiff except insofar as to determine that reversal with a

28 directive for the immediate payment of benefits would not be

appropriate at this time.